

DWR Response to Public Comments Draft 2014 Guidelines

Comment No.	Section	Page	Comment	Response
1	II. Definitions and Acronyms	4	Under "Financial Plan", we recommend that the definition also include funding for a project associated mitigation and read as follows: " ... how Applicant will fund design, permitting, construction, mitigation, and maintenance of proposed project."	The Guidelines will be updated.
2	II. Definitions and Acronyms	5	Under both "Habitat Projects" and "Habitat Banks", we recommend replacing the word "bank," with "habitat mitigation site." The term "'bank" implies that the mitigation site has gone through the Bank Enabling Instrument (BEI) process. Since the Delta Levees Program is currently planning to create a mitigation site exclusively for the Program, and does not intend to formalize the mitigation site by going through the BEI process. Referring to it as a mitigation site would also be consistent with CDFW use of the term.	The Guidelines will be updated.
3	VI. Eligible Projects	9	For the 7th bullet, please replace "DFG" with "CDFW."	The Guidelines will be updated.
4	VIII. Eligible Costs	11	Bullet 6 (4th bullet on page 11), "Reasonable overhead costs" are identified as eligible costs. Please clarify what would be included as overhead and how this would be calculated.	Reasonable overhead costs are those related to the construction of the project. They do not include administrative processes, such as audits, occurring after completion.
5	VIII. Eligible Costs	11	Bullet 7 (5th bullet on page 11), What exactly is a "Project Review?" Would a future audit be considered a Project Review? Please clarify.	The Guidelines will be updated. No, the cost of a future audit would not be covered. Compliance with audits are the responsibility of the respective agency involved (e.g. the Local Agency, the Department, etc.)
6	VIII. Eligible Costs	11	Under the 1st bullet, we recommend removing the last sentence which begins with "- this may include ..." This statement is unclear and may be confusing to applicants.	The Guidelines will be updated.
7	XII. Required Application Materials	13	The 8th bullet states, "A detailed statement of expected Project costs and a detailed Financial Plan showing the Applicant's method to pay invoices in advance of State reimbursement" is required. Paying invoices in advance of State reimbursement typically conflicts with the language in the PFAs under Special Projects, even though the local agencies are contractually bound to pay their contractors regardless of whether reimbursement is received or not. Is this a change in policy?	The Guidelines will be updated.
8	XII. Required Application Materials	13	For the last bullet, we recommend that the description include that the project must consider how the applicant is considering present and future droughts effects upon mitigation efforts.	Comment noted.
9	XII. Required Application Materials	13	For the last bullet, we recommend where it states " ... minimization, or mitigation", replacing it with " ... minimization and/or mitigation". The last sentence reads: "The statement of expected Project costs should include habitat costs". We suggest clarifying what is meant by habitat costs. For example, are they for mitigation or the enhancement component?	The Guidelines will be updated.

DWR Response to Public Comments Draft 2014 Guidelines

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10	XIV. Project Eligibility Criteria Table 1: Project Eligibility Criteria A) Levee Eligibility	16	The "Notes" section states, "For some levee systems, it [HMP] may provide the appropriate level of flood management." We recommend striking this phrase.	For some levee systems, the HMP level of protection may provide the appropriate level of flood management to receive State funding. For others, State funding may be justified to allow local agencies to improve their system beyond this level.
11	XIV. Project Eligibility Criteria Table 1: Project Eligibility Criteria B) Habitat Eligibility Requirements	17	In the "Notes" section, regarding mitigation bank pilot project, does this mean that a District has volunteered for this project? What is the intended goal, size, scale? It states this is for the "needs of DWR", is it intended for the Delta Levees Program?	All projects undertaken by participants in the Delta Levees Program are completely voluntary. The goal is to provide advance mitigation for Delta Levees Program projects; size and scale are open for negotiation.
12	XIV. Project Eligibility Criteria Table 1: Project Eligibility Criteria B) Habitat Eligibility Requirements	17	Under "Project Requirements", second paragraph, we recommend replacing the term "bank," with "habitat mitigation site." In the same Box, we suggest clarifying the first paragraph, regarding what is meant by "serves as mitigation for work under the program".	The Guidelines will be updated. See Comment 2.
13	XIV. Project Eligibility Criteria Table 1: Project Eligibility Criteria B) Habitat Eligibility Requirements	17	Within the Notes box, the second paragraph states, regarding mitigation banks "... and be tailored specifically to the needs of DWR". Please change this statement to: "... and be tailored specifically to the needs of both DWR and CDFW".	The Guidelines will be updated. See Comment 11.
14	XIV. Project Eligibility Criteria Table 2: Project Evaluation Criteria B) Levee Project Evaluation Criteria	18	A criteria regarding linkage to providing protection and/or access to other reclamation districts and beneficiaries should be added.	This condition is eligible to be considered under the Emergency criteria.
15	XIV. Project Eligibility Criteria Table 2: Project Evaluation Criteria B) Levee Project Evaluation Criteria	18	Notes," Habitat Impacts and Mitigation", second sentence. Please delete the words "or mitigate". CDFW does not always find that mitigation onsite or at the time of construction is best, though we always look for avoidance of impacts, which we would keep in the description. Future mitigation at a bank or site is often preferable.	The Guidelines will be updated.

DWR Response to Public Comments Draft 2014 Guidelines

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16	XIV. Project Eligibility Criteria Table 2: Project Evaluation Criteria B) Levee Project Evaluation Criteria	19	First paragraph under "Notes", states "... enhancement, as determined by DWR". Please reword to "... enhancement, as determined by both DWR and CDFW".	The Guidelines will be updated.
17	XIV. Project Eligibility Criteria Table 2: Project Evaluation Criteria B) Levee Project Evaluation Criteria	19	Second paragraph under "Notes". Please add "and CDFW" after "DWR" in the last sentence, so that it reads as follows: "... DWR and CDFW under this ..."	The Guidelines will be updated.
18	XVI. Cost-Share Formula	21	Existing Ability to Pay studies are not referenced in the draft guidelines, with the exception of in the Definitions and Acronyms Section. Will existing Ability to Pay studies be honored for computing project cost shares?	The Program will take into account existing Ability to Pay Studies.
19	XVI. Cost-Share Formula	21	Clarifications on whether the cost share applies to RDs with an existing ability to pay or they are limited to the level of cost share committed back in early 90's?	Comment noted. See response for Comment 18.
20	XVI. Cost-Share Formula Table 3: Project Cost-Share A) Project Cost-Share	22	Second paragraph under "Cost Share". After "... judged by DWR" please add "and CDFW."	The Guidelines will be updated.
21	XVI. Cost-Share Formula Table 3: Project Cost-Share A) Project Cost-Share	22	Second box under "Cost-Share", second paragraph. Please clarify what the "interagency cooperative mitigation banking program for Delta Levees" is. Is this reference to the Programmatic Mitigation Program between CDFW and DWR in the Delta Levees Program, but more focused on mitigation site creation? In addition, we recommend that the term "banking" not be used and deleted from this sentence.	The Guidelines will be updated.
22	XVI. Cost-Share Formula Table 3: Project Cost-Share B) Project Cost-Share Enhancements	23	Fourth paragraph. As on Page 18, we recommend that the statement be written to state that offsite mitigation may be biologically preferable, and will be determined on a case by case basis.	Comment noted.
23	XVII. Directed Activities	25	First paragraph. We suggest the inclusion of CDFW and have the passage read as follows: "... the Department, CDFW, and Local Agencies".	Comment noted.
24	XVII. Directed Activities	25	Third paragraph. Please change "... habitat bank project" to "... habitat mitigation projects", and remove the word "bank".	The Guidelines will be updated. See Comment 2.

DWR Response to Public Comments Draft 2014 Guidelines

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25	Exhibit A - Delta Levee Standard Summaries	26	An all-weather access road should be added to the criteria under the HMP standard.	This is included under Item (a)2 in Exhibit A.
26	Exhibit D - Requirements for the Five-Year Plan	55	Under Item 6a "Habitat Mitigation and Enhancement". Please replace the word "baseline," with "existing" or, alternatively simply remove "baseline," so it reads "Habitat conditions prior to the plan."	The "Requirements for The Five-Year Plan" is a historic document, and will not be modified.
27	General Comment		I am concerned with the use of the term "reasonable" to describe how eligible costs will be evaluated. MBK mentions one instance but there are several. Reasonableness is clearly a subjective measure and is easily debatable amongst reasonable minds. It is also a means to make unjustified comparisons and arrive at arbitrary conclusions. In the context of determining funding eligibility it represents an indeterminate budgeting factor that warrants clarification to be fair and non-judgmental. There must be some industry standard ranges that could be utilized to identify unjustifiable project development cost excesses. There are so many variables that influence the costs that are the target of the "reasonable" micro-management term.	Comment noted.
28	General Comment		In a future PSP or in directed actions, is DWR considering funding setback levees where Channel Margin Habitat could be created?	This option is available under the PSP currently being developed, and will likely be available under future PSPs.